

DEPARTMENT OF TRANSPORTATION**CIVIL RIGHTS**

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June 10, 2008

Gene K. Fong
Division Administrator
U.S. Department of Transportation
Federal Highway Administration
California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Dear Mr. Fong:

I appreciate the opportunity to discuss factors related to the California Department of Transportation (Caltrans) Amended Disadvantaged Business Enterprise (DBE) Goal and Methodology for fiscal year 2008, Step Two adjustment.

The recent discussion with Jo Anne Robinson, Legal Attorney Advisor, Federal Highway Administration (FHWA) in Washington, D.C. resulted in clarifying answers to the following questions.

1. Consideration of the Number of Non-certified DBEs

The relative number of DBE eligible—but non-certified minority/women-owned firms—counted in the base figure for the overall DBE goal is a factor appropriately considered by California under 49 Code of Federal Regulation (CFR) Section 26.45 (d), as explained below.

The Caltrans base figure counts two types of firms as DBEs:

- Firms currently certified.
- Minority/women-owned firms that could potentially be certified as DBEs if they applied for certification.

About four out of five DBEs counted in the base figure are non-certified. Caltrans experience, other state departments of transportation, and the Disparity Study (Study) research indicate that encouraging firms to become DBE-certified will continue to be a challenge. When a sample of DBE eligible—but non-certified minority/women-owned—firms were interviewed; most business owners knew of DBE certification and were interested in certification, but had not previously pursued certification.

Certification documentation requirements under 49 CFR Part 26 are complex.

- Documented proof of business ownership, control, and management is extensive and time consuming.
- Some business owners see the requirements to submit business and personal financial information as intrusive.

Furthermore, the primary incentive for firms to become certified as DBEs was removed in May 2006 when Caltrans discontinued setting DBE contract goals on federally-funded contracts.

Caltrans may only count certified DBEs in the DBE utilization reports prepared and submitted to FHWA. Although non-certified minority/women-owned firms are counted as DBEs in the base figure, they cannot be counted as DBEs in the utilization report; Caltrans properly took into account these facts when considering any Step Two adjustments to the base figure. This factor may lessen in importance in the future if a larger number of minority and women business owners choose to become certified as DBEs.

2. *Extent to which Factors are Quantifiable*

BBC Research and Consulting was able to quantify disparities in business ownership rates, which was the adjustment examined in the consideration of potential Step Two adjustments that could be quantified. The overall DBE goal would have been 18.8 percent if Caltrans made this adjustment.

Other factors examined in the Study, while important, did not yield quantifiable adjustments to the base figure. For example, barriers to obtaining financing may affect current availability of DBEs, but the impact is complex and not readily quantified. Attempts to quantify the impact of these types of factors on the base figure would not be productive at this time. A general overall assessment is more appropriate; many marketplace factors Caltrans considered—as part of the Step Two process—support an upward adjustment to the base figure. As described in a previous response to FHWA questions, Caltrans may elect to make an upward adjustment to the base figure for future fiscal years even though it chose not to do so at this time.

3. *Consideration of a Step Two Adjustment that Would Establish a Different DBE Goal*

Caltrans could make a Step Two adjustment that would reflect disparities in business ownership rates of minorities and women in California. As described in answer

1. *Consideration of the number of Non-certified DBEs* and in previous correspondence, such an adjustment would increase the annual DBE goal. However, based on all information Caltrans examined—including past levels of DBE utilization when DBE project goals were in place and information concerning the relative number of eligible but non-certified minority/women-owned firms—Caltrans chose to make no Step Two adjustment to the overall DBE goal at this time.


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4. *Whether or Not the Decision Not to Make a Step Two Adjustment Could Change in the Future*

Caltrans will evaluate its base figure and whether or not to make a Step Two adjustment on an annual basis. For example, future success in encouraging DBE certification could change Caltrans determination concerning a Step Two adjustment.

If you have questions or need further assistance or clarification, please contact me at (916) 324-0990, or by email, at olivia_fonseca@dot.ca.gov.

Sincerely,



OLIVIA FONSECA
Deputy Director

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